

**REMARKS**

Claims 1, 3, 4, 7, 13-16, and 19-40 are pending in the current application. Claims 1, 3, 4, 7, 13-16, and 19-40 currently stand rejected, and claims 1, 7, 13, 19, 24, 30, 36 have been amended. Reconsideration and allowance of claims 1, 3, 4, 7, 13-16, and 19-40 are respectfully requested in light of the preceding amendments and following remarks.

**Examiner Interview Requested**

Applicants respectfully request an interview with the Examiner in order to discuss the maintained rejections, which, as argued below, have not been properly addressed. Applicants respectfully request the Examiner contact Applicants' representative, Ryan Alley, at 703.668.8046 or [ralley@hdp.com](mailto:ralley@hdp.com) in order to schedule such an interview and obtain an agenda for the same, before issuing a further Office Action.

**Claim Rejections – 35 U.S.C. § 103**

Claims 1, 3, 4, 7, 13-16, and 19-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Pat 6,938,162 to Nagai et al. ("Nagai") in view of US Pat 5,737,286 to Timmermans et al. ("Timmermans") and US Pat 7,266,074 to Kim et al. ("Kim"). Applicants respectfully traverse this rejection for the reasons detailed below.

With regard to claim 1, Applicants initially note that the claim has been amended to recite that a control information unit includes both "the copy

protection indicating information” and “control information required to reproduce/record the main data.” This control information unit is “recorded in a second data field area” that is separate from the first data field area storing copy protection information. The Examiner applies a number of recorded keys and actual keys, both in the key management area of Nagai, for the recited “copy protection indicating information” and “copy protection information.” Applicants respectfully submit that the key information area 501 in Nagai **contains both** the number of recorded keys and descramble keys. See Nagai, FIG. 5. The key information area 501 cannot be the “second data field area,” because area 501 is not **separate** from a “first data field area” storing copy protection information. Even if the Examiner were to further divide the key information area 501 of Nagai into first areas 505 and second areas 504, Nagai nowhere teaches that the number of keys 504 includes “control information required to reproduce/record the main data,” which claim 1 as amended recites is stored in a “second data field area.” As such, Nagai is lacking a “second data field area” storing elements as recited in claim 1 as amended.

The Examiner replies to Applicants’ previous argument that Timmermans and Kim cannot modify “the **copy protection indicating information** and the copy protection information” in Nagai as “being recorded in a wobbled pattern by a bi-phased modulation method” by saying that Applicants failed to provide evidence that such modification is not possible or renders Nagai inoperable. Applicants respectfully submit that, as stated in MPEP § 2145, Applicants may

come forward with **argument or evidence** rebutting the Examiner's assertions of obviousness, and that the Examiner must consider and reply to such arguments. Further, arguments that two references cannot be combined in a manner that is operable or in accordance with their principles of operation directly undercut the rational underpinning that the Examiner is required to provide in making and maintaining a rejection under § 103. See MPEP § 2143.01.

Applicants previously argued that Timmermans suggests **only encrypted content data or, at best, copy protection information** being recorded in a wobbled pattern. See Timmermans, Col. 7, ll. 9-14. Timmermans and Kim never teach or suggest wobble-pattern recodation of the separately-recited "copy protection indicating information." That is, none of the applied references teach "**copy protection indicating information**" "**recorded in a wobbled pattern.**" Further, if either the key number or keys of Nagai are themselves recorded in a wobbled pattern as in Timmermans, there is no teaching of how Nagai would obtain either the keys or key number from the wobbled pattern or use the same in a decrypting function. That is, the operating principle of Nagai is at least changed, and probably destroyed, by the modification of Timmermans. Kim is applied only for teaching a bi-phased modulation and does not cure the disclosure deficiencies of Timmermans. Because Timmermans lacks any teaching or suggestion for the claim features for which it alone is applied, and, further, because a combination of Nagai with Timmermans impermissibly changes the function of (or makes inoperable)

Nagai, these references cannot be combined to render any claim obvious under § 103(a).

The Examiner also maintains that Nagai alone teaches “copy protection indicating information indicating if the computer readable medium contains the copy protection information or if the computer readable medium does not contain the copy protection information in the first area” and “the copy protection information is present depending on the indication of the copy protection indicating information” by descramble keys and a stored value of a number of descramble keys. The Examiner replies that a number of keys reading zero in Nagai would indicate that the data was not scrambled. Applicants respectfully ask, where does Nagai disclose this functionality? Nothing in Nagai discloses or suggests the situation where **no keys, and a stored “zero” value for a number of keys, exist**. Rather, Nagai always, in every embodiment, has a recording medium with encrypted data that requires at least one key to be present in order to decode the data. *See, e.g.*, Nagai, Col. 3, ll. 55-64; Col. 13, ll. 8-46 (description of encrypted data requiring key applicable to all embodiments); Claims 1, 6, 10-13, 20-23, 26 (all claims requiring decipher key). Nagai would have to be somehow modified to retain a “zero” key number with no keys, in order to meet the recited copy protection indicating information. Nagai never suggests such modification or how to achieve such modification.

Because Nagai, alone or in combination with Timmermans and Kim, fails to teach or suggest every element of claim 1 and cannot be modified to do so,

these references cannot anticipate or render obvious claim 1. Claims 7, 13, 19, 24, 30, and 36 are equally allowable over these references for reciting the same unique elements of claim 1, discussed above. Claims 3, 4, 14-16, and 20-23, 25-29, 31-35, and 37-40 are allowable at least for depending from an allowable base claim. Withdrawal of the rejection to claims 1, 3, 4, 7, 13-16, and 19-40 under 35 U.S.C. § 103(a) is respectfully requested.

**CONCLUSION**

Accordingly, in view of the above amendments and remarks, reconsideration of the objections and rejections and allowance of each of claims 1, 3, 4, 7, 13-16, and 19-40 in connection with the present application is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Ryan Alley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. §1.17; particularly, extension of time fees.

Respectfully submitted,

HARNES, DICKY, & PIERCE, P.L.C.

By



Ryan E. Alley, Reg. No. 60,977  
Gary D. Yacura, Reg. No. 35,416  
P.O. Box 8910  
Reston, Virginia 20195  
(703)668-8000

GDY/REA: tlt